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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/555,674 08/03/00 GABIZON

A 9325-0007.10

001444 HM12/0706
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WASHINGTON DC 20001-5303

EXAMINER

GUTTMAN, H

ART UNIT	PAPER NUMBER
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1651

DATE MAILED:

07/06/01

B

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/555,674

Applicant(s)

GABIZON ET AL.

Examiner

Harry J Guttman

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2001.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-53 is/are pending in the application.
- 4a) Of the above claim(s) 31-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Status of the Claims

Claims 31-53 are pending.

Election/Restrictions

Newly submitted claims 31-53 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The original elected invention was drawn to an encapsulated combination of cytokine and chemotherapeutic drug. Claims 31-41 are drawn to non-encapsulated chemotherapeutic drug and encapsulated cytokine. Claims 42-53 are drawn to separately encapsulated cytokine and chemotherapeutic drug.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 31-53 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment filed on March 23, 2001 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because of the reasons described above.

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Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

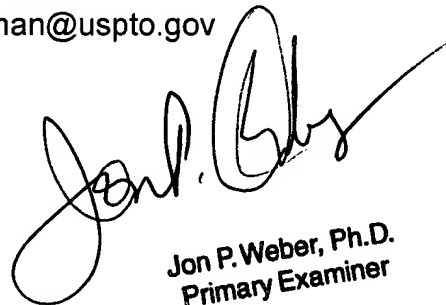
Any inquiry concerning this communication should be directed to Harry J. Guttman, Ph.D. at telephone number (703) 305-0159. The examiner can normally be reached during the hours of 07:30 to 16:00 Eastern Time, Mon.-Thurs. If attempts to reach the examiner by telephone are unsuccessful, a message may be left on the voice mail. The fax number for Art Unit 1651 is (703) 308-4242 or 305-3014. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196. My supervisor, Michael Wityshyn, may be contacted at (703) 308-4743.

All internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via internet e-mail where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified or exchanged unless there is of record an express waiver of the confidentiality requirements of 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy published in the Patent and Trademark Office Official Gazette on 25 February 1997 at 1195 OG 89.

H.J.G. 5 July 2001



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Jon P. Weber, Ph.D.
Primary Examiner